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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

2008 FEB 21 A 10:00
DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

JOHNNY HUGHLEY, #9843

petitioner,

v.

WILLIE R. COLLINS, WARDEN,

Respondent.

Civil Action No. 3:08cv102-MHT

PETITIONER'S OBJECTION TO THE

RECOMMENDATION OF THE MAGISTRATE JUDGE

Comes now the petitioner, pro-se, hereby file these his objection to the 'Recommendation of the Magistrate Judge Report dated 15 February, 2008, as follows:

1. That the judge have a sworn oath 'to uphold the Law' (Constitution), not apply it in a bias manner, to protect his co-worker's. see Webster v. United States, 330 F. Supp. 1080 (1972).

2. That the judge's duties requires him to remain 'Neutral and detached' In this case the magistrate judge's Recommendation goes beyond Neutral and/or detach, and sides with the Respondent.

3. That the Law is clear, in order to be come a second and/or successive petition, the First petition must have

been, first settled on the MERITS. In *Sanders v. United States*, 373 U.S. 1 (1963), the Court in dealing with the problem of successive applications, stated:

"Controlling weight may be given to denial of a prior application for federal habeas corpus or §2255 relief only if (1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application. [Emphasis added]."

373 U.S. at 15.

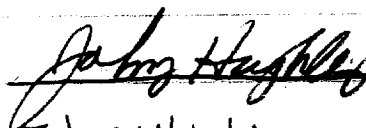
4. That the petitioner's 1999 petition was dismissed without prejudice, pursuant to Title 28 United States Code section 2244 (d), not on the merits of Hughley's petition.

5. The petitioner, have fully exhausted any/and state exhausted his State Remedy (Rule 32, Ala. R. crim. proc., in state court, on or about 17 November 2007), and filed this petition (§2241) within one-year afterwards. See 28 U.S.C. § 2244 (d) (1) (2), petitioner's first petition.

WHEREFORE, for the reasons set forth above, the petitioner moves to exclude the magistrate's Recommendation, and REQUEST an evidentiary hearing on the merits OUTLINED in his petition.

Dated this 20th day of february, 2008.

Respectfully submitted,



Johnny Hughley

montgomery city jail

p.o. Draw 159

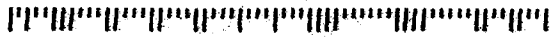
montgomery, AL 36101

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing information upon the Respondents, hand-mail, by depositing the same in the inmate mail box, on this 20th day of February, 2008, and properly address below:

Willie R. Collins, Warden
Montgomery Police Department
320 Riply Street
Montgomery, AL 36101

Johnny Hughley
Johnny Hughley



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United States District Court
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Johnny Hughes
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